# In the Supreme Court of the United States

OCTOBER TERM, 1967

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No. 585

PAUL H. SCHWEITZER AND FRIEDEL SCHWEITZER, PETITIONERS

*v.*

COMMISSIONER OF INTERNAL REVENUE

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT*

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## MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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In 1949 and 1952 the Hungarian Peoples Republic confiscated without compensation various properties that petitioner,[1] a United States citizen, owned in Hungary. Petitioner did not claim deductions on account of these confiscations on his income tax re-

[1] Friedel Schweitzer is a party only because a joint income tax return was filed for the year in issue. Paul H. Schweitzer will be referred to as petitioner.

turns for 1949 and 1952, but did seek the deductions with respect to his 1959 tax liabilities (R. 37a). The question here is whether the Tax Court correctly found as a fact that petitioner, in 1949 and 1952, had no reasonable prospect of recouping his losses, and therefore could not postpone the deduction.

The controlling legal principles are clear and have been correctly applied to the facts of this case. There is no conflict or any other basis for review by this Court.

Under settled principles, a loss such as petitioner's must be claimed, for tax purposes, in the year when it occurs. Sec. 23(e), Internal Revenue Code of 1939; Sec. 165, Internal Revenue Code of 1954; *Boehm* v. *Commissioner*, 326 U.S. 287; *United States* v. *White Dental Co.*, 274 U.S. 398; *Elek* v. *Commissioner*, 30 T.C. 731. To defer a loss, the taxpayer must have, in the year the loss is sustained, a claim for reimbursement with a reasonable prospect of recovery. *Curtis* v. *Commissioner*, 183 F. 2d 7 (C.A. 7), affirming 12 T.C. 810; *Scofield's Estate* v. *Commissioner*, 266 F. 2d 154 (C.A. 6). See, also, Treas. Reg. Section 1.165-1(d)(2)(i), 26 C.F.R.[2]

In support of his claimed loss deduction for 1959 petitioner asserts that in 1949 and 1952 he had a rea-

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[2] In a case such as this the statutory scheme provides that the taxpayer is to take a deduction in the year of loss and is to report as income any subsequent reimbursement, whenever and to whatever extent received. Sections 1.165-1(d)(1), (d)(2)(iii) of the Regulations; see *Petschek* v. *United States*, 335 F. 2d 734, 736-737 (C.A. 2); *Spitzer* v. *Commissioner*, decided August 28, 1959 (18 T.C.M. 743); cf. *Freihofer Baking Co.* v. *Commissioner*, 151 F. 2d 383 (C.A. 3).

sonable prospect of recovery and that this prospect was not foreclosed until 1959 when he received a nominal amount from the Foreign Claims Settlement Commission based upon a claim filed with it in 1957. But that claim was pursuant to a provision—Section 303—of the International Claims Settlement Act of 1949 that was not enacted until 1955. See Section 3 of the Act of August 9, 1955, c. 645, 69 Stat. 571, 22 U.S.C. 1641b. On this record the Tax Court was correct in finding that the evidence did not support petitioner's contention.

The petition for certiorari should be denied.

Respectfully submitted.

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OCTOBER, 1967.

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